

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:17-cv-00643-FDW-DCK

ERIC KINSINGER and DENISE
KINSINGER,

Plaintiffs,

v.

SMARTCORE, LLC; SMARTCORE
ELECTRICAL, LLC; SMARTCORE
ELECTRICAL SERVICES, LLC;
SMARTCORE, LLC GROUP HEALTH
BENEFIT PLAN; JARED CRAFTON
CROOK; STEVEN MATTHEW GOOD;
WILLIAM H. WINN, JR.; STAR
MARKETING AND ADMINISTRATION,
INC. d/b/a STARMARK, INC.;
TRUSTMARK LIFE INSURANCE
COMPANY; and TRUSTMARK
INSURANCE COMPANY,

Defendants.

**MOTION OF M. HEATH GILBERT, JR. AND BAUCOM, CLAYTOR, BENTON,
MORGAN & WOOD, P.A. TO WITHDRAW AS COUNSEL FOR DEFENDANTS
SMARTCORE, LLC, SMARTCORE ELECTRICAL, LLC, SMARTCORE
ELECTRICAL SERVICES, LLC, SMARTCORE, LLC GROUP HEALTH
BENEFIT PLAN, STEVEN MATTHEW GOOD, and WILLIAM H. WINN, JR.**

Undersigned attorney M. Heath Gilbert, Jr., for himself and his law firm Baucom, Claytor, Benton, Morgan & Wood, P.A., (jointly referred to as “Attorney Gilbert”), hereby moves to withdraw as counsel for Defendants SmartCore LLC, SmartCore Electrical LLC, SmartCore Electrical Services, LLC, SmartCore, LLC Group Health Benefit Plan, Steven Matthew Good, and William H. Winn, Jr. (“Defendants”). As grounds for their motion, Attorney Gilbert hereby states:

I. FACTUAL BACKGROUND AND ARGUMENT

Because of attorney-client privilege, Attorney Gilbert does not provide detailed accounts of the circumstances below, and respectfully asks the Court to recognize that motions to withdraw are considered without such details so that counsel is not required to violate the rule of attorney-client confidentiality. Should the Court require further details, Attorney Gilbert will readily appear *in camera* before the Court and make an appropriate showing to the Court outside the presence of opposing counsel to resolve any questions the Court may have.

In support of this motion to withdraw and in accordance with the cited provisions of the North Carolina Rules of Professional Conduct and Local Civil Rule 83.1(f) of this Court, Attorney Gilbert shows this Court the following:

1. Defendants insist upon taking action that Attorney Gilbert considers repugnant, imprudent, or contrary to the advice and judgment of Attorney Gilbert, and with which Attorney Gilbert has a fundamental disagreement (N.C. Rules of Professional Conduct, Rule 1.16 (4));
2. Defendants have failed substantially to fulfill an obligation to Attorney Gilbert regarding his and his firm’s services and Defendants have been given reasonable warning by Attorney Gilbert that Attorney Gilbert will withdraw unless the obligation is fulfilled (N.C. R.P.C., Rule 1.16 (6));
3. Continued representation will result in an unreasonable financial burden on Attorney Gilbert (N.C. R.P.C., Rule 1.16 (7));
4. Continued representation has been rendered unreasonably difficult by Defendants in that Defendants refuse to communicate with Attorney Gilbert and Attorney Matthew J. Norris (“Attorney Norris”) and there has been an irretrievable breakdown in the attorney-client

relationship, and it is unreasonably difficult for Attorney Gilbert or Attorney Norris (who moved separately to withdraw on behalf of him and his firm, with Attorney Gilbert's complete support and consent) to represent clients at trial when said clients will not participate in their own defense or communicate with Attorney Gilbert or Attorney Norris regarding their case or any defenses (N.C. R.P.C., Rule 1.16 (7));

5. Other good cause for withdrawal exists in that meaningful communication has completely ceased between Defendants and Attorney Gilbert, preventing Attorneys Norris and Attorney Gilbert from presenting this case at trial and putting them at risk of violating the North Carolina Rules of Professional Conduct by doing so (N.C. R.P.C., Rule 1.16 (9)).

Each of the foregoing grounds constitutes valid basis for permissive withdrawal under the North Carolina Rules of Professional Conduct.

In addition and furthermore,

6. A lawyer, including Attorney Gilbert, shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of law or the Rules of Professional Conduct; or [. . .] (3) the lawyer is discharged." North Carolina Rules of Professional Conduct, Rule 1.16 (a)(1), (3).
7. Attorney Gilbert has just concluded that continued representation of all Defendants (or any Defendant) in this matter will result in a violation of the Rules of Professional Conduct, in that an irreconcilable conflict of interest has developed and now exists that prevents Attorney Gilbert from representing any of the Defendants. Attorney Gilbert therefore must withdraw under N.C. R.P.C., Rule 1.16(a)(1).
8. Further, because of Defendants' failure to meet their contractual and client obligations to Attorney Gilbert, as well as their failure to communicate with both Attorney Gilbert and Attorney Norris, Attorney Gilbert has been constructively discharged and must withdraw under N.C. R.P.C., Rule 1.16(a)(3).

Each of the foregoing grounds constitutes valid basis for mandatory withdrawal under the North Carolina Rules of Professional Conduct.

II. ADDITIONAL MATTER FOR THE COURT'S CONSIDERATION

Attorney Gilbert has provided Defendants the opportunity and ability to cure the problems listed above, but after multiple attempts, they have not done so. Attorney Gilbert is uncertain whether Defendants plan to continue to contest this matter, but respectfully requests that all case events be continued to give Defendants time to respond to this motion and to engage other counsel should they wish to do so.

Despite Attorney Gilbert's best efforts, the conflict of interest referred to above effects the entire representation and cannot be cured. The conflict of interest presented itself in the last few weeks and has created and solidified the need for this motion.

In addition to the above conflict of interest, which mandates withdrawal so that Attorney Gilbert can avoid violating the Rules of Professional Conflict, irreconcilable differences and a complete breakdown in the attorney-client relationship and communication between lawyer and client also require Attorney Gilbert's withdrawal.

Attorney Gilbert has taken every possible step to minimize prejudice to the Defendants in connection with the filing of this motion.

In addition, Attorney Gilbert joins with Attorney Norris and emphasizes that the earlier filed renewed motion for a continuance of the April 3 trial date has been made protectively in the event that the Court denies this motion, because of Attorney Norris's substantial conflicts with the trial date as detailed in that separate motion.

However, Attorney Gilbert (like Attorney Norris in his separate motion) respectfully asks the Court to recognize that he cannot effectively represent Defendants at trial in light of the above facts, including most notably (but not exclusively) the fact that doing so will cause Attorney Gilbert to violate the North Carolina Rules of Professional Conduct forbidding attorneys from representing clients with conflicts of interest between them or representing any client in a situation where a conflict of interest exists.

Attorney Gilbert respectfully requests that Attorney Norris's motion, which is founded on the same facts, be granted as well.

Per the requirements of Local Civil Rule 83.1(f) of this Court, the last known addresses for each defendant are as follows:

Steven Matthew Good
11118 Barnyard Court
Matthews, NC 28105
matt.good@avdenellison.com

William H. Winn, Jr.
1533 Ideal Way
Charlotte, NC 28203
will.winn@me.com

SmartCore, LLC
Smart Core Electrical, LLC
SmartCore Electrical Services, LLC
SmartCore, LLC Group Health Benefit Plan
c/o Steven Matthew Good
11118 Barnyard Court
Matthews, NC 28105
matt.good@avdenellison.com

III. CONCLUSION

Attorney Gilbert respectfully requests that he be permitted to withdraw as counsel for Defendants in this matter, that case events be stayed pending the outcome of this motion, and that if this motion is granted, Defendants be afforded a reasonable amount of time to secure replacement counsel should they wish to do so. Attorney Gilbert is perfectly willing to appear before the Court, including providing information *in camera* if necessary, at oral argument on this motion to assist the Court in resolving any questions it many have concerning this motion and the grounds for its filing.

This 16th day of March, 2019.

/s/ M. Heath Gilbert, Jr
M. HEATH GILBERT, JR.
NC State Bar No. 72198
Attorneys for Defendants SmartCore, LLC, SmartCore Electrical, LLC, SmartCore Electrical Services, LLC, SmartCore, LLC Group Health Benefit Plan, Steven Matthew Good, and William H. Winn, Jr.
Baucom, Claytor, Benton, Morgan & Wood, P.A.
200 Providence Road, Suite 106
Charlotte, NC 28207
704-376-6527 (P)
704-376-6207 (F)

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this date I served the above pleading(s) or other document(s) filed in this action by depositing a copy and/or copies of such pleading(s) or other document(s) enclosed in a first class, postpaid wrapper, properly addressed to the attorney(s) for the other party(ies) and/or to the party(ies) or person(s) listed below, via the Court's electronic filing notification system to the following:

Rachel C. Matesic
Bryan L. Tyson
Marcellino & Tyson, PLLC
1315 East Boulevard, Suite 250
Charlotte, NC 28203
Attorneys for Plaintiffs

Matthew J. Norris
Norris Law Group, P.C.
10940 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90024
*Attorneys for Defendants SmartCore, LLC, SmartCore Electrical, LLC,
SmartCore Electrical Services, LLC, SmartCore, LLC Group Health Benefit Plan,
Steven Matthew Good, and William H. Winn, Jr.*

This 16th day of March, 2019.

/s/ M. Heath Gilbert, Jr
M. HEATH GILBERT, JR.
NC State Bar No. 72198
*Attorneys for Defendants SmartCore, LLC, SmartCore
Electrical, LLC, SmartCore Electrical Services, LLC,
SmartCore, LLC Group Health Benefit Plan, Steven
Matthew Good, and William H. Winn, Jr.*
Baucom, Claytor, Benton, Morgan & Wood, P.A.
200 Providence Road, Suite 106
Charlotte, NC 28207
704-376-6527 (P)
704-376-6207 (F)